

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-116891-10

Date:  
August 31, 2010

### Legend

Company =

State =

D1 =

Dear :

This letter responds to a letter dated March 10, 2010, submitted on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### Facts

Company was incorporated under the laws of State on D1. Company's sole shareholder intended that Company be treated as an S corporation as of D1. However, a Form 2553, Election by a Small Business Corporation, was not timely filed. Company requests a ruling that it will be recognized as an S corporation effective D1.

### Law and Analysis

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding

taxable year, or (B) at any time during the taxable year and on or before the 15<sup>th</sup> day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15<sup>th</sup> day of the third month of the taxable year and on or before the 15<sup>th</sup> day of the third month of the following taxable year, then such election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

#### Conclusion

Based solely on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to timely make an election to be an S corporation. Provided that Company otherwise qualifies as an S corporation, we conclude that Company will be recognized as an S corporation effective D1, if Company files a completed Form 2553 effective D1 with the appropriate service center within 120 days following the date of this letter. A copy of this letter should be attached to the Form 2553. A copy is enclosed for that purpose.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether Company is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Tara P. Volungis  
Acting Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy of this letter for § 6110 purposes

cc: